

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MICHAEL HUTCHISON,

Plaintiff,

Civil No. 04-6372-CO

v.

FINDINGS AND  
RECOMMENDATION

MARION COUNTY, et al.,

Defendants.

COONEY, Magistrate Judge.

Defendant National Commercial Industries filed a Motion to Dismiss (#16) on August 22, 2005. On August 25, 2005, the Marion County defendants filed a Motion for Summary Judgment (#19). Plaintiff, who has been advised of the federal summary judgment standard, see, Order (#26) has not responded to either motion. By Order (#27) entered November 5, 2005, plaintiff was ordered to show cause within 21 days why the defendants' unopposed motions should not be allowed.

Plaintiff was advised that failure to show cause as directed by the court would result in the dismissal of this action for failure to prosecute. Plaintiff has not responded to the defendants' motions or the court's order to show cause.

Defendant National Commercial Industries unopposed Motion to Dismiss (#16) on the ground's of lack of jurisdiction and failure to state a claim should be allowed. Defendant National Commercial Industries is not a "person acting under color of state law" for purposes of liability under 42 U.S.C. § 1983.

Defendants Marion County Tax Office and Marion County Board of Commissioners' unopposed Motion for Summary Judgment (#19) should be allowed on the ground that the un-controverted facts submitted in support of the motion establish that plaintiff received notice of the foreclosure giving rise to his claims in this case and was afforded due process with respect to the foreclosure of his property. There are no genuine issues of material fact remaining as to the defendants and defendants are entitled to judgment as a matter of law.

This action should be dismissed with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district

court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 21 day of November, 2005.

s/  
John P. Cooney  
United States Magistrate Judge